

NORTH CAROLINA)
)
ROCKINGHAM COUNTY)

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 999

NANCY E. ODELL, individually and on)
behalf of those similarly situated,)
)
Plaintiff,)
v.)
)
LEGAL BUCKS, LLC, a North Carolina)
Limited Liability Company, JAMES KEITH)
TART and LYNN DAVIES TART,)
)
Defendants.)

**MOTION FOR SUMMARY
JUDGMENT ON COUNTERCLAIM**

NOW COMES defendant Legal Bucks, LLC (“Legal Bucks”), through counsel and pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, and respectfully moves the Court for summary judgment on its Counterclaim for breach of contract on the grounds that there is no genuine issue of material fact and Legal Bucks is entitled to judgment as a matter of law. This summary-judgment motion is based on all pleadings, discovery, files and records in this action. As further support for this motion, Legal Bucks shows the following to the Court:

1. On March 28, 2003, Plaintiff and Legal Bucks entered into a TRANSFER AND CONVEYANCE OF PROCEEDS AND SECURITY AGREEMENT (the “Agreement”). The Agreement is attached as Exhibit A to Plaintiff’s Complaint.
2. Pursuant the Agreement, Legal Bucks paid Plaintiff the sum of \$3,000 in exchange for the rights to potential proceeds in her underlying automobile claim valued at between \$4,200 and \$9,750, depending upon the length of time required to resolve her claim.
3. Attorney Lawrence Egerton, Jr. (“Egerton”) represented Plaintiff at the time and acknowledged the Agreement in compliance with 2000 Formal Ethics Opinion 4.

4. As part of the Agreement, Plaintiff agreed as follows:

9. If the undersigned attorney ceases to represent the Plaintiff subsequent to the date of this Agreement, Plaintiff shall, within five (5) business days of the last date of representation, give written notice, by certified mail, return receipt requested, to Legal Bucks, 3542 Yadkinville Road, PMB #314, Winston-Salem, North Carolina 27106, or such other address as may be provided by Legal Bucks. Further, within five (5) days of new counsel's hire, Plaintiff shall direct any new attorney(s) to acknowledge receipt of this security interest and lien.

5. On or about January 11, 2005, Egerton ceased representing Plaintiff.

6. Plaintiff refused and failed to advise Legal Bucks that Egerton had ceased representation of her as provided by Paragraph 9 of the Agreement, thereby placing Legal Bucks' investment at increased risk.

7. In April 2005, Legal Bucks learned from Egerton that Plaintiff had retained new counsel, Frederick Berry ("Berry").

8. On or about April 13, 2005, Legal Bucks wrote Berry and advised him of Legal Bucks' interest in Plaintiff's potential proceeds.

9. On April 14, 2005, Berry sent a facsimile letter to Legal Bucks advising of his conclusion that the Agreement was an "illegal contract."

10. On or about April 19, 2005, Legal Bucks again wrote Berry and expanded upon the reasons as to why the Agreement is legal and enforceable.

11. Having heard nothing from Plaintiff or Berry for the following month, on or about May 20, 2005, Legal Bucks again wrote Berry and provided further information regarding the legality and enforceability of the Agreement, including the fact that the opposing insurance company in Plaintiff's case had recognized Legal Bucks' rights in a separate case.

12. Again hearing nothing, Legal Bucks sent a letter to Plaintiff on or about May 31, 2005, asking that she comply with her contractual duty and direct Berry to acknowledge the Agreement.

13. On or about June 3, 2005, Berry referenced Legal Bucks' May 31 correspondence to Plaintiff and advised Legal Bucks to "not contact her [Plaintiff] directly again and direct all communication to me."

14. On or about June 15, 2005, Plaintiff filed suit against Legal Bucks and its officers, Lynn Tart and Keith Tart.

15. Upon reading the Complaint, Legal Bucks learned for the first time that Plaintiff had settled the underlying person injury claim and had sufficient funds to satisfy her obligations to Legal bucks, therefore entitling Legal Bucks to the sum of \$9,750. Compl. at ¶ 16.

16. On June 15, 2005, Plaintiff's counsel deposited \$9,750 with the Clerk of Superior Court in Rockingham County pending the determination of this civil action.

17. On December 28, 2006, the Honorable Peter M. McHugh dismissed Plaintiff's Complaint in its entirety with prejudice.

18. By refusing to honor Legal Bucks' interest in the proceeds of the settlement of her underlying tort lawsuit, by refusing to pay Legal Bucks the proceeds to which it was rightfully entitled, and by filing a meritless lawsuit against Legal Bucks, Plaintiff terminated and/or breached the Agreement, damaging Defendants as set forth in Legal Bucks' Counterclaim. See Am. Answer & Countercl., filed Aug. 31, 2005.

19. Paragraph 13 of the Agreement provides as follows:

In the event that Plaintiff terminated or otherwise breaches the covenants, conditions or terms of this Agreement, Plaintiff shall pay liquidated damages to Legal Bucks in the amount of three

times (3x) the Security Interest set forth in Paragraph 2, above. Plaintiff expressly acknowledges that in the event of termination or other breach of covenants, conditions and terms of this Agreement, the anticipated loss to Legal Bucks in such an event will be estimated to be the amount set forth in the foregoing liquidated damages provision, and such estimated value is reasonable and not imposed as a penalty.

20. Because she breached the covenants, conditions and terms of the Agreement, Legal Bucks is entitled to liquidated damages in the amount of three times (3x) the Security Interest (\$29,250).

21. Plaintiff acknowledged that the amount of liquidated damages in Paragraph 13 of the Agreement is reasonable and not imposed as a penalty. Her acknowledgement is further supported by the fact that Plaintiff's willful failure and refusal to pay money owed to Legal Bucks has denied Legal Bucks access and opportunity to use that money for other advances, thereby denying it opportunities to receive returns on such advances.


22. Pursuant to the Agreement, Plaintiff owes Legal Bucks the sum of \$29,250, together with post-judgment interest at the legal rate of eight percent (8%), as allowed by N.C. Gen. Stat. § 24-5.¹

WHEREFORE, Legal Bucks respectfully requests that the Court grant its motion for summary judgment on its Counterclaim for breach of contract and award it the amount of \$29,250, together with post-judgment interest available at law, and that the Court further assess costs against Plaintiff and grant Legal Bucks all such other relief as the Court deems just and proper.

¹ In the event the Court does not enforce the liquidated damages provision in the Agreement, then Legal Bucks would be entitled to pre-judgment interest at the legal rate of eight percent (8%) under N.C. Gen. Stat. § 24-5.

This the 5th day of March, 2007.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC



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CERTIFICATE OF SERVICE

The undersigned attorney for defendants certifies that on the 5th day of March, 2007, a copy of the foregoing Motion for Summary Judgment on Counterclaim was served on counsel of record addressed as follows:

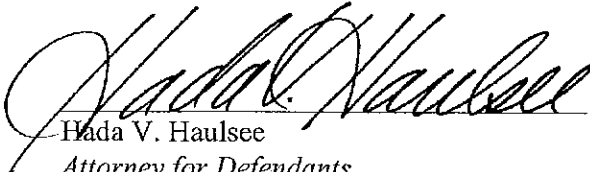
ADDRESSEES:

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